

CARGILL, INCORPORATED  
LAW DEPARTMENT  
200 GRAIN EXCHANGE  
MINNEAPOLIS 15, MINN.

DONALD C. LEVIN  
CALVIN J. ANDERSON  
JOHN F. MCGRORY  
SAMUEL D. TIMMONS  
VICTOR ANDERSON  
RAYMOND J. DITTRICH  
JAMES E. GOOD  
JOHN S. ERICKSON

COUNSEL TO THE  
EXECUTIVE COMMITTEE  
SUMNER B. YOUNG

December 18, 1959

To the Commission of Public Docks  
3070 N. W. Front Avenue  
Portland, Oregon

RECEIVED  
THE COMMISSION OF PUBLIC DOCKS  
PORTLAND, OREGON

DEC 21 1959

Attention: Mr. E. H. Smith  
Assistant Secretary and Comptroller

RE: Rent Abatement due to fire in Tank No. 6

OPER..... TRAFFIC.....  
ACCOUNT..... ENGR.....  
FILE.....

Gentlemen:

We are obliged to you for your letter of November 5th which we have now had an opportunity of considering. We believe that we have now collected sufficient factual data on the speed with which the tank was emptied to deal with the points you raise.

We would submit to you with respect that there is a basic fallacy in your contention as to the lack of dispatch on the part of ourselves and that in all of the circumstances the period for unloading was reasonable. We believe that when you have had an opportunity to consider the facts enumerated below that you will agree with us on this matter. Our investigation discloses the facts to have been as follows:

October 24 to October 28 -- This period was devoted primarily to fighting the fire. It was during this phase that some 5,500 gallons of water plus soap detergent, carbon tetrachloride and a wetting agent were poured into the tank.

October 28 to November 7 -- During this period two shifts a day were being worked and grain was being transferred to the coal bunkers. It should be borne in mind that when emptying a tank of this nature through holes cut in the side, as was done here, one gets in the initial phase a great deal of assistance from the effect of gravity since the tank, for approximately the first third, tends to empty itself. This accounts for a high rate of unloading in the early stages. On November 7th the coal bunkers were full and there remained approximately 250,000 bushels in the tank and all available space was plugged.

On November 15 permission was granted for the use of Pier I as temporary storage. Immediately the construction of the necessary bulk heads was put in hand and on December 1st it was possible to begin transferring grain from the tank to the Pier.

T4T900000334

December 18, 1959

December 1 to December 23 -- During this period one shift was worked on the 15 available working days. Work was not done on weekends or holidays nor on three specific days when the truck scale was not available, thus making the days not worked during this period as follows:

December 6, 7	--	Weekend
December 8	--	Scale unavailable
December 14	--	Weekend
December 15	--	Scale unavailable
December 20, 21	--	Weekend
December 22	--	Scale unavailable

There was a real question at this time whether the working of a double shift would have effected an economy. During this period of 15 working days there was moved 180,000 bushels for an average rate of 12,000 bushels a day. This is to be compared with your theoretical figure of 3,644 bushels per day for this period.

December 23 to January 10 -- During this period the balance of the grain was removed with one shift working on regular workdays but not on:

December 24 - 28	--	Christmas holidays
January 1	--	New Year
January 3, 4	--	Weekend

As the final clean-up began, of necessity, the rate of removal fell quite low. However, after permission was given to use the pier the fact is that in the 25 working days available from December 1st to January 10th there was removed 240,000 bushels giving an average daily take of 9,600 bushels as again contrasted with your theoretical rate of 3,644 bushels. Mr. Brown on January 9th was notified by phone that the tank would be empty the 10th. On January 10 the last two trucks of damaged grain were hauled out and the balance, consisting of a half truckload was removed by scoopmobile and dumped.

On January 14 Mr. Thane E. Brown and Mr. Floyd Neff representing C.P.D. met with Mr. Hood and others to inspect the tank. Mr. Brown indicates in a memo dated January 15th relating to this meeting that the tank had been completely emptied a few days previously. You will note that this conflicts with your allegation that the tank was emptied only on January 23rd.

On January 28 -- That is 18 days after being emptied repair work was begun and this was finally completed on April 10th.

On May 25 -- Cargill was able to resume use of the tank, the period between April 10th and May 25th having been used to install aeration equipment.

In view of the above we trust that you will agree with us that the required standard of diligence and dispatch was in fact met by Cargill and that no part of the 168-day period should be disallowed for the purpose of a rent abatement.

To the Commission of Public Docks

-3-

December 18, 1959

With regard to a rental basis for the computation we agree that as regards the new Annex the annual rental is \$139,055.00 giving a figure of \$17,381.875 annual rental for one tank and \$47.6216 daily rental for one tank. On this basis the abatement should be  $168 \times \$47.6216 = \$8,000.4288$ .

As indicated to you in our letter of June 5th, it is our understanding of the lease, Paragraph 15, that the rent will abate save in instances where the use and occupancy insurance is inapplicable.

We trust that you will be able to let us have an early response to this letter in view of the already protracted period which these negotiations have taken.

Yours sincerely,



Victor Anderson

VA:vp  
cil

T4T900000336

**RECEIVED**  
THE COMMISSION OF PUBLIC DOCKS LESSER, ESDON AND COMPANY  
PORTLAND, OREGON ADJUSTERS OF INSURANCE LOSSES

CAPITOL 7-5696

811 SOUTHWEST SIXTH AVENUE  
PORTLAND 4, OREGON

DEC 22 1959

OPER..... TRAFFIC.....  
ACCOUNT..... ENGR.....  
FILE.....

December 18, 1959

Commission of Public Docks  
3070 N. W. Front Avenue  
Portland 10, Oregon

Attention: Mr. Ned Smith,  
Comptroller

Re: CITY OF PORTLAND, BY ITS COMMISSION OF  
PUBLIC DOCKS  
Location No. 3 - Municipal Terminal No. 4  
Date of Loss - October 23, 1958  
Our File No. - C 19,817 A

Dear Mr. Smith:

With reference to the above captioned loss, our file has come up on diary and we note we have received no response from you to our letter of October 20, 1959 pertaining to the adjustment on this matter.

If anything new has developed we would appreciate your advices or your concurrence with our opinion as to the basis on which this claim should be adjusted.

Very truly yours,

LESSER, ESDON and COMPANY

  
M. H. Esdon

MHE: kw

cc : Cole, Clark & Cunningham



T4T900000337